

Attorney Docket No.: FLA-0010  
Inventors: Andreas Fellingner  
Serial No.: 09/308,408  
Filing Date: June 28, 1999  
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#### REMARKS

Claims 16 and 17 are pending in the instant application. Claims 16 and 17 have been rejected. Reconsideration is respectfully requested in light of the following remarks.

**I. Rejection of Claims 16-17 under 35 U.S.C. § 112, second paragraph**

Claims 16 and 17 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner suggests that the phrase "whose size is determined by the number and size of the swabs" in claim 16 is indefinite because no sufficient structure of the medical swabs has been presented to determine the size of the chamber." Applicant respectfully traverses this rejection.

As stated in MPEP § 2173.02 definiteness of claim language must be analyzed, not in a vacuum, but in light of:

- (A) the content of the particular application disclosure;
- (B) the teachings of the prior art; and
- (C) the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time this invention was made.

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The claims of the instant application are drawn to storage devices for medical swabs. The structure, size and shape of medical swabs used routinely by those skilled in this art during treatment of patients is quite well known. Accordingly, the size of a chamber required to store such swabs is already known by those skilled in this art and need not be specifically defined in the instant application to render the claims definite. It is therefore respectfully requested that this rejection be withdrawn.

## **II. Rejection of Claims 16-17 under 35 U.S.C. § 103(a)**

Claims 16-17 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Zackheim (U.S. Patent 3,162,306) in view of Moser et al. (U.S. Patent 3,941,248). The Examiner suggests that Zackheim discloses most of the limitations of the claims, except for the foil materials. However, the Examiner suggests that Moser et al. disclose a roll of blister pack formed by foil base and foil lid and that the user can push through the lid to reach the content. Therefore, the Examiner suggests that it would have been obvious to use the foil material for the package of Zackheim to prevent bacterial buildup in the groove area and to prevent infection. Applicant respectfully traverses this rejection.

In accordance with MPEP § 2143 to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there

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must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references when combined must teach or suggest all the claim limitations.

Zackheim discloses a laminate formed by a relatively heavy backing sheet, a cover sheet and the product sheet (the medical pad). See col. 1, lines 21-25. As taught at col. 1, lines 25-29, the product sheet (the medical pad) is adhered to the backing sheet, on one side, and the cover sheet, on the other side, in areas completely surrounding the pads to form a plurality of sealed individual pockets enclosing the pads. The pocket is opened via a tab of the laminate adapted to permit tearing of the backing sheet from the cover sheet.

Moser et al. disclose a childproof packaging design with an additional cavity incorporated into the base foil so that the cover foil can be grasped and peeled off when the individual tablet package is severed from the whole pack.

In contrast, claim 16 of the present application specifies that the base foil and cover foil of the storage device are both flexible. Accordingly, this limitation of the storage device is

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different from the laminate with the "relatively heavy backing layer" as disclosed by Zackheim. Further, claim 16 specifies that the chambers can be broken upon pressure on the flexible cover foil. Thus, this limitation of the storage device is also different from the tab structure taught by Zackheim and the additional cavity taught by Moser.

Accordingly, since the combination of references fails to teach or suggest all the claim limitations, they can not render obvious the instant invention.

It is therefore respectfully requested that this rejection be withdrawn.

### III. Conclusion

Applicant believes that the foregoing comprises a full and complete response to the Office Action of record. Accordingly, favorable reconsideration and subsequent allowance of the pending claims is earnestly solicited.

Respectfully submitted,

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